
SUBSTITUTE HOUSE BILL 2342

State of Washington 59th Legislature 2006 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Moeller, Appleton, Nixon, Hunt, Curtis, Lantz, Morrell, Springer, Wallace, Fromhold, Kagi, Roberts, Cody, Ericks, Green and Ormsby)

READ FIRST TIME 01/24/06.

1 AN ACT Relating to establishing a health care declarations
2 registry; amending RCW 70.122.040, 71.32.080, and 70.122.051; adding
3 new sections to chapter 70.122 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that effective
6 communication between patients, their families, and their care givers
7 regarding their wishes if they become incapacitated results in health
8 care decisions that are more respectful of patients' desires. Whether
9 the communication is for end-of-life planning or incapacity resulting
10 from mental illness, the state must respect those wishes and support
11 efforts to facilitate such communications and to make that information
12 available when it is needed.

13 It is the intent of the legislature to establish an electronic
14 registry to improve access to health care decision-making documents.
15 The registry would support, not supplant, the current systems for
16 advance directives and mental health advance directives by improving
17 access to these documents. It is the legislature's intent that the
18 registry would be consulted by health care providers in every instance

1 where there may be a question about the patient's wishes for periods of
2 incapacity and the existence of a document that may clarify a patient's
3 intentions.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.122 RCW
5 to read as follows:

6 (1) The department of health shall establish and maintain a
7 statewide health care declarations registry containing the health care
8 declarations identified in subsection (2) of this section as submitted
9 by residents of Washington. The department shall digitally reproduce
10 and store health care declarations in the registry. The department may
11 establish standards for individuals to submit digitally reproduced
12 health care declarations directly to the registry, but is not required
13 to review the health care declarations that it receives to ensure they
14 comply with the particular statutory requirements applicable to the
15 document. The department may contract with an organization that meets
16 the standards identified in this section.

17 (2)(a) An individual may submit any of the following health care
18 declarations to the department of health to be digitally reproduced and
19 stored in the registry:

- 20 (i) A directive, as defined by this chapter;
- 21 (ii) A durable power of attorney for health care, as authorized in
22 chapter 11.94 RCW;
- 23 (iii) A mental health advance directive, as defined by chapter
24 71.32 RCW; or
- 25 (iv) A form adopted pursuant to the department of health's
26 authority in RCW 43.70.480.

27 (b) Failure to submit a health care declaration to the department
28 of health does not affect the validity of the declaration.

29 (c) Failure to notify the department of health of a valid
30 revocation of a health care declaration does not affect the validity of
31 the revocation.

32 (d) The entry of a health care directive in the registry under this
33 section does not:

- 34 (i) Affect the validity of the document;
- 35 (ii) Take the place of any requirements in law necessary to make
36 the submitted document legal; or
- 37 (iii) Create a presumption regarding the validity of the document.

1 (3) The department of health shall prescribe a procedure for an
2 individual to revoke a health care declaration contained in the
3 registry.

4 (4) The registry must:

5 (a) Be maintained in a secure data base that is accessible through
6 a web site maintained by the department of health;

7 (b) Send annual electronic messages to individuals that have
8 submitted health care declarations to request that they review the
9 registry materials to ensure that it is current;

10 (c) Provide individuals who have submitted one or more health care
11 declarations with access to their documents and the ability to revoke
12 their documents at all times; and

13 (d) Provide the personal representatives of individuals who have
14 submitted one or more health care declarations to the registry,
15 attending physicians, advanced registered nurse practitioners, health
16 care providers licensed by a disciplining authority identified in RCW
17 18.130.040 who is acting under the direction of a physician or an
18 advanced registered nurse practitioner, and health care facilities, as
19 defined in this chapter or in chapter 71.32 RCW, access to the registry
20 at all times.

21 (5) In designing the registry and web site, the department of
22 health shall ensure compliance with state and federal requirements
23 related to patient confidentiality.

24 (6) The department shall provide information to health care
25 providers and health care facilities on the registry web site regarding
26 the different federal and Washington state requirements to ascertain
27 and document whether a patient has an advance directive.

28 (7) The department of health may accept donations, grants, gifts,
29 or other forms of voluntary contributions to support activities related
30 to the creation and maintenance of the health care declarations
31 registry and statewide public education campaigns related to the
32 existence of the registry. All funds received shall be transferred to
33 the health care declarations registry account, created in section 3 of
34 this act.

35 (8) The department of health may adopt rules as necessary to
36 implement this act.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.122 RCW
2 to read as follows:

3 The health care declarations registry account is created in the
4 state treasury. All receipts from donations made under section 2 of
5 this act, and other contributions and appropriations specifically made
6 for the purposes of creating and maintaining the registry established
7 by section 2 of this act and statewide public education campaigns
8 related to the existence of the registry, shall be deposited into the
9 account. Moneys in the account may be spent only after appropriation.
10 Expenditures from the account may be used only for purposes of the
11 health care declarations registry.

12 **Sec. 4.** RCW 70.122.040 and 1979 c 112 s 5 are each amended to read
13 as follows:

14 (1) A directive may be revoked at any time by the declarer, without
15 regard to the declarer's mental state or competency, by any of the
16 following methods:

17 (a) By being canceled, defaced, obliterated, burned, torn, or
18 otherwise destroyed by the declarer or by some person in the declarer's
19 presence and by the declarer's direction.

20 (b) By a written revocation of the declarer expressing
21 (~~declarer's~~) his or her intent to revoke, signed, and dated by the
22 declarer. Such revocation shall become effective only upon
23 communication to the attending physician by the declarer or by a person
24 acting on behalf of the declarer. The attending physician shall record
25 in the patient's medical record the time and date when (~~said~~) the
26 physician received notification of the written revocation.

27 (c) By a verbal expression by the declarer of (~~declarer's~~) his or
28 her intent to revoke the directive. Such revocation shall become
29 effective only upon communication to the attending physician by the
30 declarer or by a person acting on behalf of the declarer. The
31 attending physician shall record in the patient's medical record the
32 time, date, and place of the revocation and the time, date, and place,
33 if different, of when (~~said~~) the physician received notification of
34 the revocation.

35 (d) In the case of a directive that is stored in the health care
36 declarations registry under section 2 of this act, by an online method
37 established by the department of health. Failure to use this method of

1 revocation for a directive that is stored in the registry does not
2 invalidate a revocation that is made by another method described under
3 this section.

4 (2) There shall be no criminal or civil liability on the part of
5 any person for failure to act upon a revocation made pursuant to this
6 section unless that person has actual or constructive knowledge of the
7 revocation except as provided in RCW 70.122.051(4).

8 (3) If the declarer becomes comatose or is rendered incapable of
9 communicating with the attending physician, the directive shall remain
10 in effect for the duration of the comatose condition or until such time
11 as the declarer's condition renders the declarer able to communicate
12 with the attending physician.

13 **Sec. 5.** RCW 71.32.080 and 2003 c 283 s 8 are each amended to read
14 as follows:

15 (1)(a) A principal with capacity may, by written statement by the
16 principal or at the principal's direction in the principal's presence,
17 revoke a directive in whole or in part.

18 (b) An incapacitated principal may revoke a directive only if he or
19 she elected at the time of executing the directive to be able to revoke
20 when incapacitated.

21 (2) The revocation need not follow any specific form so long as it
22 is written and the intent of the principal can be discerned. In the
23 case of a directive that is stored in the health care declarations
24 registry created by section 2 of this act, the revocation may be by an
25 online method established by the department of health. Failure to use
26 the online method of revocation for a directive that is stored in the
27 registry does not invalidate a revocation that is made by another
28 method described under this section.

29 (3) The principal shall provide a copy of his or her written
30 statement of revocation to his or her agent, if any, and to each health
31 care provider, professional person, or health care facility that
32 received a copy of the directive from the principal.

33 (4) The written statement of revocation is effective:

34 (a) As to a health care provider, professional person, or health
35 care facility, upon receipt. The professional person, health care
36 provider, or health care facility, or persons acting under their

1 direction shall make the statement of revocation part of the
2 principal's medical record; and

3 (b) As to the principal's agent, upon receipt. The principal's
4 agent shall notify the principal's health care provider, professional
5 person, or health care facility of the revocation and provide them with
6 a copy of the written statement of revocation.

7 (5) A directive also may:

8 (a) Be revoked, in whole or in part, expressly or to the extent of
9 any inconsistency, by a subsequent directive; or

10 (b) Be superseded or revoked by a court order, including any order
11 entered in a criminal matter. A directive may be superseded by a court
12 order regardless of whether the order contains an explicit reference to
13 the directive. To the extent a directive is not in conflict with a
14 court order, the directive remains effective, subject to the provisions
15 of RCW 71.32.150. A directive shall not be interpreted in a manner
16 that interferes with: (i) Incarceration or detention by the department
17 of corrections, in a city or county jail, or by the department of
18 social and health services; or (ii) treatment of a principal who is
19 subject to involuntary treatment pursuant to chapter 10.77, 70.96A,
20 71.05, 71.09, or 71.34 RCW.

21 (6) A directive that would have otherwise expired but is effective
22 because the principal is incapacitated remains effective until the
23 principal is no longer incapacitated unless the principal has elected
24 to be able to revoke while incapacitated and has revoked the directive.

25 (7) When a principal with capacity consents to treatment that
26 differs from, or refuses treatment consented to in, the provisions of
27 his or her directive, the consent or refusal constitutes a waiver of
28 that provision and does not constitute a revocation of the provision or
29 directive unless the principal also revokes the directive or provision.

30 **Sec. 6.** RCW 70.122.051 and 1992 c 98 s 5 are each amended to read
31 as follows:

32 (1) For the purposes of this section, "provider" means a physician,
33 advanced registered nurse practitioner, health care provider acting
34 under the direction of a physician or an advanced registered nurse
35 practitioner, or health care facility, as defined in this chapter or in
36 chapter 71.32 RCW, and its personnel.

1 (2) Any ((physician, health care provider acting under the
2 direction of a physician, or health facility and its personnel))
3 provider who participates in good faith in the withholding or
4 withdrawal of life-sustaining treatment from a qualified patient in
5 accordance with the requirements of this chapter, shall be immune from
6 legal liability, including civil, criminal, or professional conduct
7 sanctions, unless otherwise negligent.

8 (3) The establishment of a health care declarations registry does
9 not create any new or distinct obligation for a provider to determine
10 whether a patient has a health care declaration.

11 (4) A provider is not subject to civil or criminal liability or
12 sanctions for unprofessional conduct under the uniform disciplinary
13 act, chapter 18.130 RCW, when in good faith and without negligence:

14 (a) The provider provides, does not provide, withdraws, or
15 withholds treatment to a patient in the absence of actual knowledge of
16 the existence of a health care declaration stored in the health care
17 declarations registry established in section 2 of this act;

18 (b) The provider provides, does not provide, withdraws, or
19 withholds treatment pursuant to a health care declaration stored in the
20 health care declarations registry established in section 2 of this act
21 in the absence of actual knowledge of the revocation of the
22 declaration;

23 (c) The provider provides, does not provide, withdraws, or
24 withholds treatment according to a health care declaration stored in
25 the health care declarations registry established in section 2 of this
26 act in good faith reliance upon the validity of the health care
27 declaration and the declaration is subsequently found to be invalid; or

28 (d) The provider provides, does not provide, withdraws, or
29 withholds treatment according to the patient's health care declaration
30 stored in the health care declarations registry established in section
31 2 of this act.

32 (5) Except for acts of gross negligence, willful misconduct, or
33 intentional wrongdoing, the department of health is not subject to
34 civil liability for any claims or demands arising out of the
35 administration or operation of the health care declarations registry
36 established in section 2 of this act.

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